

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:09-00271

CLARK A. DIEHL

MEMORANDUM IN SUPPORT OF
SUBSTANTIAL ASSISTANCE MOTION

Comes now the United States of America by Jack Smith, Chief, Public Integrity Section, Criminal Division, U.S. Department of Justice, Maria N. Lerner, Trial Attorney, Public Integrity Section, and Hunter P. Smith Jr., Assistant United States Attorney for the Southern District of West Virginia, and submits this Memorandum in Support of Substantial Assistance Motion.

The United States hereby apprises the Court of the extent and usefulness of Mr. Diehl's cooperation, and asks the Court to fashion a sentence that takes both into account. In fashioning that sentence, the Court is permitted to depart from the otherwise applicable guideline range, pursuant to the Motion for Substantial Assistance filed by the Government pursuant to Section 5K1.1 of the U.S. Sentencing Guidelines.

The investigation in which Mr. Diehl cooperated began several years ago, and was handled jointly by the Federal Bureau of Investigation, the Internal Revenue Service, and the West Virginia Legislature's Commission on Special Investigations. The investigation was opened after allegations were made that Mr. Diehl

was engaging in tax evasion. The ensuing investigation into Mr. Diehl uncovered numerous, wide-ranging fraudulent business practices, including tax violations and frauds committed against his employees, the State of West Virginia, private clients, advertisers, and general contractors.

When advised of the progress of the investigation against him, Mr. Diehl agreed to plead guilty and cooperate with the Government. He provided information on purchasing practices regarding work he performed in the Office of the Governor and in the Governor's Mansion. Mr. Diehl made allegations of public corruption in connection with his work and about violations of the competitive bidding rules applicable to his contracts with the State.

During his cooperation, Mr. Diehl provided a fulsome account of his business dealings with the State of West Virginia, including explaining several years of transactions of his dealings with the State, providing financial and other business records and photographs related to those transactions, and reviewing records of those transactions obtained from the State. Mr. Diehl was able to corroborate that he provided free goods and services and that he received contracts in violation of competitive bidding rules.

As part of his cooperation, Mr. Diehl recorded telephone conversations and wore a wire in face-to-face meetings with officials and employees of the State of West Virginia. Although he recorded more than 100 conversations as part of this investigation,

only a few proved of limited usefulness, and overall the recordings failed to corroborate Mr. Diehl's allegations of public corruption. In addition, the Government was unable to rely on his credibility, in light of his extensive fraudulent activity prior to his cooperation.¹

The Government asks the Court to fashion a sentence that takes into account both the extent and the usefulness of Mr. Diehl's cooperation.

Respectfully submitted,

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/s/ Maria N. Lerner
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¹ In addition to his pre-cooperation fraudulent conduct, Mr. Diehl engaged in further conduct early into his cooperation, specifically by failing to pay employment taxes for some of his employees.

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing "Memorandum in Support of Substantial Assistance Motion" has been electronically filed and service has been made on opposing counsel by virtue of such electronic filing on this the 2nd day of August, 2011, to:

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